

STATE OF DELAWARE
OFFICE OF
AUDITOR OF ACCOUNTS

**OFFICE OF MANAGEMENT AND
BUDGET**

**CONTRACT BID LAWS
SPECIAL INVESTIGATION**

FIELDWORK END DATE: DECEMBER 19, 2008

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State of Delaware
Office of Auditor of Accounts
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At a Glance

Working Hard to Protect YOUR Tax Dollars

Why We Did This Review

The Office of Auditor of Accounts (AOA) received the following allegations regarding the Government Support Section (GSS) division within the Office of Management and Budget (OMB):

- Canon Business Solutions, Inc. (Canon) was awarded a contract without meeting bid proposal requirements and did not comply with mandatory material requirements, and
- Canon was permitted to modify its proposal after the fact, while other bidders were not permitted to modify their proposals.

Background

The Contracting unit within GSS manages all statewide contracts for goods and services and administers agency contracts as requested. It is the State's central contracting unit that acts on behalf of State agencies, local government units, authorized volunteer fire companies, and School Districts.

Procedures for competitive sealed proposals are detailed in Delaware Code Title 29, Chapter 6924.

Delaware Code Title 29, Chapter 6911(d) mandates that every State department and agency within the Executive Branch and Judicial Branch of the State government (except those specifically exempted from mandatory use contracts) procure all material, equipment, and nonprofessional services through the statewide contracts administered by GSS.

For further information on this release, please contact:

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OFFICE OF MANAGEMENT AND BUDGET
CONTRACT BID LAWS

What We Found

The Copiers and Multi-Function Printers Contract (the Contract) is a mandatory use contract. The Contract covers copier requirements for all State agencies for a three-year term from April 15, 2008 through April 14, 2011 with optional renewal periods.

AOA found the following:

- GSS had sufficient and detailed policies and procedures regarding the issuance and award of proposals.
- GSS received several proposals, none of which met all specifications of the RFP.
- GSS notified bidders of the issues with their proposals, and requested Best and Final Offers from two of the vendors.
- Per GSS's review of the Best and Final Offers, Canon's offer best met the needs of the State and the RFP requirements. The Best and Final Offer for the other vendor failed to address four out of seven of GSS's concerns with the initial proposal.
- Due to an immaterial oversight, Canon's Best and Final Offer referred to both 2006 and 2007 copier models. In addition, the initial contract between GSS and Canon referenced 2006 models. This oversight was corrected with addendums to the contract which updated the model numbers with no change in cost to the State.
- Only one 2006 model was placed in service Statewide. All other models used by the State under this contract are in compliance with RFP requirements.

AOA concludes GSS (a) did not violate the procurement statute, (b) did not take, or fail to take, any action that would warrant a "rebid" of the contract, and (c) made a rational and informed decision in awarding the contract to Canon.

What We Recommend

Although the contract has already been properly amended, AOA recommends that GSS implement a review process to ensure that contract information matches the Best and Final Offer before the contract is signed and placed in effect. In addition, OMB should review buyer's lab reports as applicable prior to awarding the contract to avoid using outdated equipment and ensure all vendors are in compliance with the RFP.

Please read the complete report for a full list of findings/ recommendations and to review the OMB's response to our findings.

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AUDIT AUTHORITY

Title 29, Del. C. c. 29 authorizes the Auditor of Accounts (AOA) to file written reports containing:

1. Whether all expenditures have been for the purpose authorized in the appropriations;
2. Whether all receipts have been accounted for and paid into the State Treasury as required by law;
3. All illegal and unbusinesslike practices;
4. Recommendations for greater simplicity, accuracy, efficiency, and economy; and
5. Such data, information, and recommendations as the AOA may deem advisable and necessary.

ALLEGATION AND BACKGROUND

ALLEGATION

The Office of Auditor of Accounts (AOA) received the following allegations regarding the Government Support Section (GSS) division within the Office of Management and Budget (OMB):

- Canon Business Solutions, Inc. (Canon) was awarded a contract without meeting bid proposal requirements and did not comply with mandatory material requirements, and
- Canon was permitted to modify its proposal after the fact, while other bidders were not permitted to modify their proposals.

BACKGROUND

GSS

The Contracting unit within GSS manages all statewide contracts for goods and services and administers agency contracts as requested. It is the State's central contracting unit that acts on behalf of State agencies, local government units, authorized volunteer fire companies, and school districts.

Bidding Process

Procedures for competitive sealed proposals are detailed in Delaware Code Title 29, Chapter 6924. Suppliers submit a Request for Proposal (RFP) on a specific product or service through a bidding process. An RFP typically involves a price, but can also include basic corporate information and history, financial information, technical capability, product information, and customer references. Most RFP's include specifications providing a better chance for accuracy on proposals. Once the proposals are returned by the set date and time, they are used to evaluate the suitability of a supplier, vendor, or institutional partner. Discussions may be held on the proposals, and all or selected bidders may be invited to submit their best offer.

Copiers and Multi-Function Printers RFP, Contract Number GSS-MU-09-091VM

The Copiers and Multi-Function Printers Contract (the Contract) is a mandatory use contract. Delaware Code Title 29, Chapter 6911(d) mandates that every State department and agency within the Executive Branch and Judicial Branch of the State government (except those specifically exempted from mandatory use contracts) procure all material, equipment, and nonprofessional services through the statewide contracts administered by GSS. The Contract covers copier requirements for all State agencies for a three-year term from April 15, 2008 through April 14, 2011 with optional renewal periods.

OBJECTIVE, SCOPE, & METHODOLOGY

OBJECTIVE

The objective of this investigation was to determine if bid proposal laws were properly followed.

SCOPE

The investigation was performed in accordance with the President's Council on Integrity and Efficiency, *Quality Standards for Investigations*.

AOA reviewed the bid proposals, award documents, and correspondence related to the Contract that was awarded to Canon on April 15, 2008.

METHODOLOGY

The investigative approach included:

- Interview and inquiry.
- Inspection and confirmation of documentation.

CONCLUSIONS

ALLEGATIONS

- Canon was awarded a contract without meeting bid proposal requirements and did not comply with mandatory material requirements.
- Canon was permitted to modify its proposal after the fact, while other bidders were not permitted to modify their proposals.

RESULTS OF TESTING

Based on interviews, consultation with the State of Delaware's Office of Attorney General, and review of various documents such as Delaware bid laws, the Request for Proposal (RFP), proposals, Best and Final Offers, and correspondence between GSS and bidders, AOA found:

- GSS had sufficient and detailed policies and procedures regarding the issuance and award of proposals.
- GSS received several proposals, none of which met all specifications of the RFP.
- GSS notified bidders of the issues with their proposals, and requested Best and Final Offers from two of the vendors.
- Per GSS's review of the Best and Final Offers, Canon's offer best met the needs of the State and the RFP requirements. The Best and Final Offer for the other vendor failed to address four out of seven of GSS's concerns with the initial proposal.
- Due to an immaterial oversight, Canon's Best and Final Offer referred to both 2006 and 2007 copier models. In addition, the initial contract between GSS and Canon referenced 2006 models. This oversight was corrected with addendums to the contract which updated the model numbers with no change in cost to the State.
- Only one 2006 model was placed in service Statewide. All other models used by the State under this contract are in compliance with RFP requirements.

AOA concludes GSS (a) did not violate the procurement statute, (b) did not take, or fail to take, any action that would warrant a "rebid" of the contract, and (c) made a rational and informed decision in awarding the contract to Canon.

CONCLUSION

Unsubstantiated.

FINDINGS AND RECOMMENDATIONS

Finding #1 - Lack of Documentation

Criteria

Section D of Appendix A in the Request for Proposal states, "Copiers in bands 1-10, including multi functional equipment having a domestic introduction date after January 1, 2007, will be accepted under this contract."

Condition

After the contract was awarded, GSS discovered that Canon's equipment listed in the contract was not in compliance with the RFP. The equipment listed on the contract did not match the equipment listed on Canon's Best and Final Offer. The following machines were listed in error:

	Per Original Contract	Per Canon's Best and Final Offer
Band II	IR 2020	IR 2022
Band IX	IR 7086	IR 7086 v2
Band X	IR 7095	IR 7095 v2
Color	IRC 3380	IRC 3380 v2
Color	IRC 4580	IRC 4580 v2

In addition, the release date of one out of ten bands was not in compliance with the RFP specifications. Canon's IR 1023 was introduced in November 2006. After the non-compliance was discovered, Canon replaced the IR 1023 with the IR 1023N, which has an introduction date of April 9, 2008.

Amendment #1 corrected the above errors and replaced the outdated machine with a compliant model. There were no changes to the contract pricing as a result of Amendment #1 and all copiers provided to the State, except for one, were within RFP requirements. One non-compliant copier does not constitute a material breach of contract.

Cause

These errors were caused by an immaterial human error and lack of oversight regarding copier models.

Effect

These errors result in increased scrutiny over the fairness in the bid process and could lead to unnecessary costs and non-compliant equipment.

Recommendation

Although the contract has already been properly amended, AOA recommends that GSS implement a review process to ensure that contract information matches the Best and Final Offer before the contract is signed and placed in effect. In addition, OMB should review buyer's lab reports as applicable prior to awarding the contract to avoid using outdated equipment and ensure all vendors are in compliance with the RFP.

FINDINGS AND RECOMMENDATIONS

Auditee Response

Following your recommendation for additional review, GSS/Contracting has instituted an additional step in the Best and Final review process. Under Section 111 Guidelines of the RFP Process Guidance document (attached) we have included under #19, another step in the process to include "the Supervisor" will review the Best and Final for accuracy and sign off on the bid tabulation.

Regarding the recommendation that GSS/Contracting should review the Buyer's Lab reports as applicable prior to awarding the contract to avoid using outdated equipment and ensure all vendors are in compliance with the RFP. GSS/Contracting will be eliminating that requirement and replacing it with contract language that stipulates all Copiers supplied by the awarded vendor(s) under the contract shall be of the "latest Version."

DISTRIBUTION OF REPORT

Copies of this report have been distributed to the following public officials:

Executive

The Honorable Jack A. Markell, Governor, State of Delaware

Legislative

The Honorable Russell T. Larson, Controller General, Office of the Controller General

Other Elective Offices

The Honorable Joseph R. Biden III, Attorney General, Office of the Attorney General

Other

The Honorable Ann Visalli, Director, Office of Management and Budget
Mr. Dean W. Stotler, Director, Government Support Services